

BRENDA TOLBERT

Plaintiff,

v.

RBC CAPITAL MARKETS
CORPORATION N/K/A RBC CAPITAL
MARKETS, LLC; RBC CENTURA
BANK N/K/A RBC BANK (USA);
RBC U. S. INSURANCE SERVICES, INC.

Defendants.

CIVIL ACTION NO. 4:11-CV-00107

Plaintiffs file this Unopposed Motion to Supplement the Summary Judgment Record and Motion for Class Certification, and to Re-urge Class Certification, and would respectfully show unto the Court the following:

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burden of proof on its affirmative defenses of exhaustion of administrative remedies, limitations (since RBC continues to aver that the WAP is compliant, undercutting its argument that these Plaintiffs have “actual knowledge” that it is not), and top hat status. *See*, Plaintiff’s Response to Defendants’ Motion for Summary Judgment and Reply in support of its Motion for Partial Summary Judgment [Dkt. #93] at 32-36, 49-52.

2. The heart of Plaintiffs’ and the class’ claim is that the WAP is an illegal, non-compliant plan. The answer to that question, and all of the class members’ claims, depends upon whether the WAP is an employee pension benefit plan which has operated as a valid top hat plan since its inception. These new Plaintiffs can adequately represent a class of current and former RBC employees – all of whom are interested in the common issue of whether the WAP is a compliant employee pension plan. *See*, Neuhaus and Gift Declarations collectively attached hereto as Exhibit “B”.

CONCLUSION

For the reasons set forth above and in their prior briefing, Plaintiffs respectfully request that the Court grant their Motion for Partial Summary Judgment [Dkt. #84] and certify the class for a trial or further disposition before the Court on June 21, 2012, and for such other and further relief, either at law or in equity, general or special, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,
GARDERE WYNNE SEWELL LLP

/s/ Geoffrey H. Bracken

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**ATTORNEYS FOR PLAINTIFFS, BRENDA
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JOSEPH RICE NEUHAUS, JR.**

CERTIFICATE OF CONFERENCE

Opposing counsel has informed the undersigned that he does not oppose this Motion, but anticipates filing a response within the deadlines set out in the Court's rules.

/s/ Geoffrey H. Bracken

Geoffrey H. Bracken

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above pleading was served on Defendants' counsel via the Court's electronic filing system on this 4th day of June, 2012.

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